CHAPTER 2

AUTHORITY AND RESTRICTIONS

2.1 Appointed by the Chief Executive of the Hong Kong Special Administrative Region Government, The Ombudsman has statutory authority to operate with complete independence. The enabling legislation is The Ombudsman Ordinance (the Ordinance), Cap 397, Laws of Hong Kong.

Powers and Functions

2.2 The Ombudsman has a duty to investigate into maladministration, by the public organisations on Schedule 1 to the Ordinance, through processing of complaints or by direct investigation. As with Ombudsman institutions the world over, The Ombudsman has wide investigative powers : e.g. access to all information and summon of witnesses relevant to cases under investigation. Upon completion of investigation, The Ombudsman ensures that all recommendations are implemented for better services to our community.

Fig.2.1 **Definition of maladministration - Section 2 of the Ordinance**

"Maladministration" means inefficient, bad or improper administration and, without derogation from the generality of the foregoing, includes -

(a) unreasonable conduct, including delay, discourtesy and lack of consideration for a person affected by any action;

(b) abuse of any power (including any discretionary power) or authority including any action which -

 (i) is unreasonable, unjust, oppressive or improperly discriminatory or which is in accordance with a practice which is or may be unreasonable, unjust, oppressive or improperly discriminatory; or

 (ii) was based wholly or partly on a mistake of law or fact; or

(c) unreasonable, unjust, oppressive or improperly discriminatory procedures.

2.3 However, The Ombudsman's Office is not a Court of Law and, unlike Court verdicts, The Ombudsman's recommendations are not binding.

Restrictions

2.4 The Ombudsman's purview is not all pervasive. Section 10 of the Ordinance prescribes restrictions on investigation while Schedule 2 to the Ordinance specifies actions not subject to The Ombudsman's investigation.

Fig.2.2 **Major restrictions on investigation of complaint - Section 10 of the Ordinance**

- Complainant having knowledge of subject of complaint for more than two years
- Complaint made anonymously
- Complainant not identified or traced
- Complaint not made by person aggrieved or suitable representative
- Subject of complaint and complainant having no connection with Hong Kong
- Statutory right of appeal or remedy by way of legal proceedings (except judicial review) available to complainant
- Complaint of trivial, frivolous, vexatious or malicious nature

Fig.2.3 Examples of actions not subject to investigation – Schedule 2 to the Ordinance

- Actions in relation to security, defence or international relations
- Legal proceedings or prosecution decisions
- Exercise of power to pardon criminals
- Contractual or commercial transactions
- Personnel matters
- Grant of honours, awards or privileges by the Government
- Actions by Chief Executive personally
- Imposition or variation of conditions of land grant
- Actions in relation to Hong Kong Codes on Takeovers and Mergers and Share Repurchases
- Crime prevention and investigation actions by Hong Kong Police Force or Independent Commission Against Corruption

My Office critically screens all incoming complaints to establish whether they come within my statutory purview. If not, we promptly explain why we cannot pursue the complaints and where possible, we point out the avenues for redress.

Investigation Process

2.5 I am assisted by my deputy, two Assistant Ombudsmen and seven investigation teams. I have delegated to each level specific authority within which they act on my behalf. As a general rule, the work of investigation officers is carefully vetted and monitored by team leaders. Final reports and replies are scrutinised by the directorate and then by me for final decision. Since 2000, we have enhanced the complaint management system so that with the assistance of my directorate, I can monitor the progress of our investigations more closely.

Internal Monitoring

2.6 My investigation officers work under close scrutiny. The Assistant Ombudsmen hold meetings regularly with individual investigation teams, to keep tabs on cases under processing. These sessions provide a forum for exchange of views and analysis of facts, debate on contentious points and directions for follow-up action. Above all, they ensure consistency in case work and also provide opportunities for experience-sharing.

2.7 To keep my fingers on the pulse of our operations, I attend meetings of each team at least once a month. In this way, I directly guide investigations, clear uncertainties and discuss strategies on complex cases.

2.8 From time to time, I convene open forums with staff to update them on concepts, principles and philosophy on matters within my purview. These help to promote mutual understanding and enhance *esprit de corps*. Through these discussions, we refine operational processes and standardise practices.

Secrecy Requirement

2.9 All members of my Office, including myself, must abide by a secrecy code. We are required by law to keep the strictest confidentiality on all matters that come to our knowledge in the exercise and execution of our functions. Breach of this code may be a criminal offence, which carries a maximum penalty of a fine of $50,000 and imprisonment for two years.

2.10 From time to time, Councillors and civic leaders, members of the public and the media refer complaints to me with the expectation that they be informed of the progress of processing. We sincerely appreciate their support and warmly welcome their referral. However, we are duty-bound by law not to discuss or to disclose the processing or the outcome of any including those very complaints. With the exception of official publication of an investigation report in anonymised form, we cannot and we will not

respond to any enquiry on individual complaints other than from the authorised parties. Here, I take the opportunity to thank all who have referred complaints to my Office for their understanding of our secrecy code.

2.11 Before initiating inquiries, we always seek the complainants' consent to obtain their personal data from organisations concerned and to reproduce their documents to relevant organisations for the purpose of processing their cases.

2.12 The secrecy code is for absolute observance. It is the hallmark of our integrity.

The Ombudsman's Discretion

2.13 Section 9 of the Ordinance gives The Ombudsman absolute discretion to undertake, continue or discontinue an investigation. This means that I may decide not to pursue a complaint if the subject matter is trivial, frivolous, vexatious or not made in good faith. The same applies to complaints which I conclude as not being maladministration. Exercise of this discretion enables me to maximise the use of resources and hence our services to the community. It also prevents the abuse or misuse of the complaint machinery.

2.14 In view of my statutory independence, my decision on a case is final. Anyone not satisfied with my decision may apply for review by my Office (reviving a case) or by the Courts (judicial review).